

# AMERICAN SEED TRADE ASSOCIATION



February 6, 2007

Chairman Ed Butcher and Members  
House Agriculture Committee  
Montana House of Representatives  
PO Box 200400  
Helena MT 59620

Re: Montana HB 432 – A Bill for an Act entitled: *“An Act providing that liability for damages resulting from the introduction of a genetically modified organism must be assumed by the company that holds the patent for the genetically modified organism; and providing an exemption from liability for the company that holds the patent to a genetically modified organism when a farmer knowingly and intentionally grows a genetically modified organism.”*

The American Seed Trade Association (ASTA) is writing this letter in opposition to HB 432, which is currently pending before the Montana legislature. The bill primarily attempts to hold the seed company that patented a technology strictly liable for the unintended presence of seeds or plant parts developed through modern biotechnology regardless of the company's role or responsibility in the production of the subject crop. The bill is unnecessary, and contrary to public policy. It also inappropriately distinguishes between different types of farmers and seed companies, creating competitive disincentives in Montana among different agricultural sectors and increasing the cost of doing business in the state.

Founded in 1883, ASTA is one of the oldest trade organizations in the United States. Its membership consists of about 850 companies involved in seed production and distribution, plant breeding and related industries. ASTA's membership is comprised primarily of U.S. companies, although it does have members from 15 other countries. ASTA advocates science and policy issues of importance to the seed industry. Its mission is to enhance the development of free movement of seed worldwide.

ASTA is a diverse organization. It represents all types of seed companies and technologies – seed from alfalfa to zucchini, technologies from organic to biotechnology and companies from “mom and pop” to multinationals. Among others, it has a standing committee on organic seed and a standing committee on biotechnology. ASTA has members in 47 states. It works on behalf of all of its members at the state, national and international levels. In other words, ASTA represents every company that would be affected by the proposed legislation, and works in cooperation with the rest of agribusiness and consumers as well, whom the proposed legislation would also affect.

Seeds improved with modern biotechnology have been and are continuing to be adopted rapidly across the United States and around the world. In the United States, the vast majority of soybeans, cotton, and corn acres are planted with seeds improved with modern biotechnology. Globally, in the past decade, over 1 billion acres of crops improved through modern biotechnology have been harvested. Over 8 million farmers in 18 countries grow these crops. The adoption of these crops is the result of their economic, environmental and human health benefits. Initiatives like HB 432 interfere with the continued development, marketing and acceptance of these seeds and crops.

From a legal standpoint, the bill is unnecessary and contrary to public policy. Existing legal remedies for individual farmers who allege injury from seed developed through modern biotechnology or any other technology are well established and adequate. Common law provides several avenues of relief for farmers, including negligence and nuisance. In addition, seed sellers and buyers can set terms for the planting and stewardship of seed crops, and assign liability through contract. As technology has advanced throughout the past century, the standard common law remedies have been able to adapt to novel situations. The well-established common law remedies are sufficient, and there is no need for the legislature to fashion new remedies for any one type of technological advancement. To interfere with parties' freedom to contract is contrary to public policy. Moreover, to hold a seed company responsible for alleged damages when the company has no control over a crop's production is unfair and unreasonable.

HB 432 is also anticompetitive and potentially discriminatory among different agricultural sectors. Increasing exposure of seed companies producing product through modern biotechnology to litigation – a likely effect of the proposed legislation – would also likely increase their cost of selling seed in Montana. The cost of the seed for farmers will increase and/or the availability of seed will decrease. Both of these outcomes would penalize unnecessarily the many Montana farmers producing high quality crops from such seed. It will also penalize all others in the seed supply chain including dealers as well as small and large companies; and will reduce the size, offering and competitiveness of the Montana seed industry compared to other states. To the extent that increases in input and production costs are passed through the food chain, the bill would penalize others in the food chain as well as Montana consumers.

In summary, the use of seeds improved through modern biotechnology continues to grow around the world as a result of their economic, environmental and human health benefits. Farmers' use of these seeds in Montana is no exception to this pattern of growth. In our view, HB 432 as it is now drafted is unnecessary from a legal standpoint and otherwise raises several serious practical concerns. Of significance, it would add unnecessarily to the cost of doing business in Montana and penalize Montana farmers. Affecting seed companies large and small, HB 432

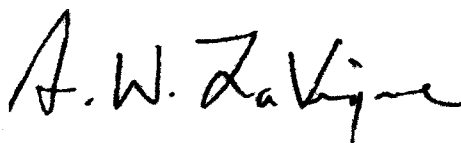
## **American Seed Trade Association**

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would also reduce the size, offerings and competitiveness of the seed industry in Montana compared to other states.

Accordingly, ASTA opposes HB 432. Please do not hesitate to contact us if you have any questions. Thank you for your consideration.

Cordially yours,

A handwritten signature in black ink, reading "A. W. LaVigne". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

Andrew W. LaVigne  
President and CEO  
American Seed Trade Association